THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 66 OF 2006

06-02-2006

Between:

Boya Madanna.

……Petitioner

And

Government of Andhra Pradesh, rep. by its Chief Secretary & Others.

…..Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 66 OF 2006

ORDER : (Per Hon'ble Sri Bilal Nazki, J)

This writ petition has been filed, challenging the order of detention passed by respondent No.2 in terms of the Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggers,

Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as 'the Act').

In the grounds of detention, three instances have been given, which relate to – (1) Crime No.57/2004-05, dated 18.6.2004, (2) Crime No.235/2004-05, dated 11.3.2005 and (3) Crime No.129/2005-06, dated 21.9.2005. According to the Collector, the detenu was committing illegal activities by possessing, transporting and selling Karnataka Arrack Sachets in Yemmiganur village and as such he was acting in a manner which was prejudicial to the maintenance of public order and tranquility, and as he was causing danger to the public health and safety, he was a Boot-legger within the meaning of Section 2 (b) of the Act.

The only contention raised before us in assailing the order of detention is that there was no material before the Collector to come to a conclusion that the detenu's activities were prejudicial to the maintenance of public order. It will be pertinent to note here that in terms of explanation to Section 2 (a) of the Act, public order would also mean danger to public health. The learned counsel for petitioner submits that samples were taken in all the three cases registered against the detenu and the Public Analyst, in his report, has stated –

"1. Test for Alcohol :- Positive

2. *Test for Fuel Oil :- Within the limits.*

3. *Test for Acidity :- Neutral PH."*

He submits that these tests would not show that the alcohol seized was in any way dangerous to public health. However, under column 3 of the report, the percentage of Spirit or Hydrometer Strength of alcohol has been given as 38.5 U.P.

This Court would not be in a position to say whether the analysis carried by Public Analyst shows that the alcohol was dangerous to public health or not, because, that is the matter for

experts to decide. However, the same Public Analyst, after giving analysis of the sample, has given his opinion that the sample was diluted arrack and was unfit for public consumption. Since the Public Analyst was of the opinion that the sample was unfit for public consumption, in our view, this was relevant material for arriving at subjective satisfaction with regard to the desirability of detaining the detenu. This question has been considered by a Full Bench of this Court in **Doddi Sharada v. Collector and District Magistrate**. In para 27 of this judgment, the Full Bench held –

> *"27. In the light of all these judgments, it is clear that what is necessary for the District Magistrate for arriving at a subjective satisfaction on the basis of the material before him is that the activities of the person are prejudicial to maintenance of public order. In terms of Explanation to Section 2(a) public order would also mean a danger to public health and if the Public Analyst, on a seized sample, was of the opinion that it is not potable or was not fit for human consumption, that in our view, is relevant material for the purpose of arriving at subjective satisfaction. In our view, it is not necessary that the percentages of different constituents of the sample should be mentioned by the Public Analyst. Even if a Public Analyst gives the composition of all the ingredients of the sample without mentioning whether the sample was fit for human consumption or not, it may not be possible for the District Magistrate to know as to whether the sample was injurious to health or not. Basically, it is the opinion of the Public Analyst, which is paramount in determining whether the liquor that was being sold, stored or manufactured, would cause danger to public health."*

No other ground is urged in this writ petition.

For these reasons, we do not find merit in this writ petition, which is accordingly dismissed. No order as to costs.

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(BILAL NAZKI, J)

6th February 2006

(G.CHANDRAIAH, J)

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